

Office of the Yavapai County Attorney
255 E. Gurley Street, Suite 300
Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

YAVAPAI COUNTY ATTORNEY'S OFFICE
JOSEPH C. BUTNER SBN 005229
DEPUTY COUNTY ATTORNEY
255 East Gurley Street
Prescott, AZ 86301
Telephone: 928-771-3344
ycao@co.yavapai.az.us

9 FILED
APR 21 2010
JEANNE HICKS, Clerk
BY R. HOEHE Deputy

IN THE SUPERIOR COURT OF STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS THE SOLE
REMAINING AGGRAVATOR:
PECUNIARY GAIN

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Dismiss the Sole Remaining Aggravator: Pecuniary Gain and requests that Defendant's Motion be denied as the motion is untimely and, more definitively, it is legally unsupported and clearly without merit.

Ariz. R. Crim. P., Rule 16.1(b) and (c) provide that "[a]ll motions shall be made no later than 20 days prior to trial ... unless the basis therefore was not then known." The deadline for filing motions was April 14, 2010. This Court struck two of the aggravating factors on April 8. Clearly, the defense team knew the basis for this motion prior to the deadline; therefore, the motion should be precluded because it is untimely.

1 In Arizona, a defendant may be sentenced to death if before trial the prosecution
2 notices one or more of the aggravating circumstances and the defendant is convicted of first
3 degree murder. As Defendant acknowledges, five individuals are currently on death row
4 where only one aggravating factor was found. The Arizona Supreme Court has repeatedly
5 determined that "where pecuniary gain is the sole aggravating factor supported by the
6 evidence, the death penalty may be warranted." *State v. Hoskins*, 199 Ariz. 127, 147-48, 14
7 P.3d 997, 1017-18 (2000); *See also State v. McKinney*, 185 Ariz. 567, 584, 917 P.2d 1214,
8 1231 (1996); *State v. Spears*, 184 Ariz. 277, 295-96, 908 P.2d 1062, 1080-81 (1996); *State v.*
9 *White*, 168 Ariz. 500, 511, 815 P.2d 869, 880 (1991), *abrogated on other grounds by State v.*
10 *Salazar*, 173 Ariz. 399, 416-17, 844 P.2d 566, 583-84 (1992). In *Hoskins*, the pecuniary gain
11 allegation stemmed from a car-jacking and subsequent murder of the owner of the vehicle.
12 The Court found that "though pecuniary gain is the sole aggravating circumstance, it is
13 wholly sufficient to make defendant death eligible." *Id.* at 148, 14 P.3d at 1018.
14

15
16 Defendant's request to dismiss the remaining aggravator is untimely, baseless, clearly
17 unsupported by Arizona law, and must be precluded or denied.
18

19 RESPECTFULLY SUBMITTED this 28th April, 2010.
20

21
22 Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

23
24 By: _____

25 Joseph C. Butner
26 Deputy County Attorney

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COPIES of the foregoing delivered this
28th day of April, 2010 to:

Honorable Thomas J. Lindberg
Division 6
Yavapai County Superior Court
(via email)

John Sears
PO Box 4080
Prescott, AZ 86302
Attorney for Defendant
(via email)

Larry Hammond
Anne Chapman
Osborn Maledon, P.A.
2929 North Central Ave, 21st Floor
Phoenix, AZ
Attorney for Defendant
(via email)

By: Deb Couell